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E-Filed 4/30/09

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FISHER

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTHERN CALIFORNIA

JUAN CERVANTES, RAFAEL
ARVIZU, NICOLAS GOMEZ, CESAR
NAVA, and ALEJANDRO CRUZ-
SANDOVAL, on behalf of themselves
and all others similarly situated,
Plaintiffs,

vs.

A.C.F. CUSTOM CONCRETE
CONSTRUCTION, INC, ART C.
FISHER and DOES 1 through 20,
inclusive,

Defendants

Case No.: C08-4798 RS

**STIPULATION AND ~~PROPOSED~~
ORDER FOR ORDER APPROVING:
1. PROPOSED COLLECTIVE CLASS
ACTION NOTICE FOR
DISTRIBUTION TO POTENTIAL
OPT-IN PLAINTIFFS; 2. A 60 DAY
NOTICE PERIOD FROM THE DATE
OF ENTRY OF THIS ORDER FOR
PLAINTIFFS' COUNSEL TO
DISTRIBUTE AND FILE OPT-IN
CONSENT FORMS; AND 3. ORDER
THAT DEFENDANTS POST THE
COLLECTIVE ACTION NOTICE AT
DEFENDANTS' PLACE OF
BUSINESS.**

1 Plaintiffs JUAN CERVANTES, RAFAEL ARVIZU, NICOLAS GOMEZ, CESAR
 2 NAVA, and ALEJANDRO CRUZ-SANDOVAL (“the Plaintiffs”) and Defendants A.C.F.
 3 CUSTOM CONCRETE CONSTRUCTION, INC, ART C. FISHER, seek and hereby stipulate
 4 to an order approving: 1. proposed collective class action notice for distribution to potential
 5 opt-in Plaintiffs; 2. a sixty (60) day notice period from the date of entry of this Order for
 6 Plaintiffs’ counsel to distribute the notice and opt-in consent form, and file opt-in consent
 7 forms; and 3.) order that Defendants post the collective action notice at Defendants’ place of
 8 business

10 BACKGROUND

11 Plaintiffs worked for Defendant ACF Concrete Construction in the trade of laying
 12 concrete. Plaintiffs now seek Certification of an FLSA Collective Action through which the
 13 named Plaintiffs would represent the following group of workers: all current and former
 14 employees of Defendant A.C.F. CUSTOM CONCRETE CONSTRUCTION, INC. who have
 15 performed construction involving the trade of laying concrete for work on public works
 16 projects or on private concrete pouring projects for Defendant A.C.F. CUSTOM CONCRETE
 17 CONSTRUCTION, INC. between OCTOBER 20, 2004 and APRIL 23, 2009.

19 Plaintiffs allege that they were not paid for all their hours worked. The lawsuit also
 20 claims that the Defendants pay practices violated the federal minimum wage law. Defendants
 21 deny these allegations.

23 ANALYSIS

24 The parties ask this Court to conditionally certify a collective action and to: 1.) approve
 25 sending the proposed collective action notice to all potential opt-in Plaintiffs; 2.) grant
 26 Plaintiffs’ counsel sixty days from the date of entry of this Order to distribute notice and file
 27 opt-in consent forms; and 3.) order Defendants to post the collective action notice at their place
 28 of business.

I. CONDITIONAL CERTIFICATION OF FLSA COLLECTIVE ACTION

“Courts have held that conditional certification requires only that ‘plaintiffs make substantial allegations that the putative class members were subject to a single illegal policy, plan or decision.’” *Leuthold v. Destination America, Inc.*, 224 F.R.D. 462, 467-448 (N.D. Cal. 2004). Plaintiffs allege Defendants violated the FLSA by failing to pay Plaintiffs for all hours worked. Plaintiffs also allege that wages paid fell below the minimum wage. Additionally, attached to Plaintiffs’ complaint are FLSA opt-in forms signed by nine (9) former employees, which indicates that other workers may desire to opt in. The parties stipulate that the concrete layers employed by Defendant ACF Concrete were employed the terms of the same employment contracts, and are similarly situated with respect to their pay provision and job requirements. The parties stipulate that a substantial number of workers were employed in nearly identical positions, alleging nearly identical types of wage violations. Therefore, conditional certification of collective action is appropriate.

II. NOTICE OF COLLECTIVE ACTION

“The FLSA requires the court to provide potential plaintiffs ‘accurate and timely notice concerning the pendency of the collective action, so that they can make informed decisions about whether to participate.’” *Hoffmann-La Roche II*, 493 U.S. 165, 170 (1989). Additionally, “[i]n exercising the discretionary authority to oversee the notice-giving process, courts must be scrupulous to respect judicial neutrality. To that end, trial courts must take care to avoid even the appearance of judicial endorsement of the merits of the action.” *Hoffman La Roche, Inc. v. Sterling* (1989) 493 US, 465, 493.

III. FORM OF NOTICE

The purpose of the notice to the class is to provide “accurate and timely notice of the pendency of the collective action...” *Hoffman La Roche, Inc.* at 493. Plaintiffs will distribute the notice by both first class mail and word of mouth.

The parties stipulate to the following notice to the class:

Notice of Right to Opt-In

To: All current and former employees of Defendant A.C.F. CUSTOM CONCRETE CONSTRUCTION, INC. who have performed construction involving the trade of laying concrete for work on public works projects or on private concrete pouring projects for Defendant A.C.F. CUSTOM CONCRETE CONSTRUCTION, INC. between OCTOBER 20, 2004 AND MAY __, 2009.

Re: RIGHT TO OPT-IN TO RECOVER ALLEGEDLY UNPAID MINIMUM WAGES

DATE: May __, 2009

Introduction

The purpose of this Notice is to inform you about a lawsuit brought under the federal minimum wage law, called the Fair Labor Standards Act, against Defendants A.C.F. CUSTOM CONCRETE CONSTRUCTION, INC. and ART FISHER (together called the “Defendants”) for allegedly unpaid compensation. This Notice will advise you of how your rights may be affected by this lawsuit, and tells you how you can join this lawsuit. If you do not act, you may lose some of your rights.

No Opinion Expressed as to Merits of the Lawsuit

This notice is for the sole purpose of providing workers employed by Defendants with information concerning your right to join this lawsuit. Although this notice and its contents have been authorized by the Court, the Court takes no position regarding the merits of Plaintiffs’ claims.

Description of Lawsuit

A group of workers who laid concrete for Defendants have filed a lawsuit against in the United States District Court for the Northern District of California. The name and case number of the lawsuit is Juan Cervantes, et al, v. ACF Custom Concrete, et al., case no. C-08-4798 RS.

In their first claim of the lawsuit, Juan Cervantez and the other Plaintiffs say they were not paid for all their hours worked. The lawsuit claims that the Defendants pay practices violated the federal minimum wage law. The Plaintiffs are suing on behalf of themselves and all other workers who worked for ACF CONCRETE, INC. The Plaintiffs seek the recovery of their unpaid wages, liquidated damages, penalties, attorneys fees, and other damages and compensation.

Your Right to Join this Lawsuit

If you worked for Defendants at any time from October 20, 2004 to April 30, 2009, and believe you were not paid all of the wages you were owed, you may make a claim to recover those wages by signing and returning the form entitled "consent to Sue," which is attached to this notice. The Consent to Sue forms must be received by Talamantes, Villegas, Carrera, LLP by **June __, 2009**. The consent to sue form should be mailed to Plaintiffs' attorneys:

Talamantes/Villegas/Carrera, LLP
170 Columbus Avenue, Suite 300
San Francisco, CA 94113
U.S.A.

Or sent by fax to: Fax from the U.S.: 1-415-989-8028
Fax from Mexico: 011-415-989-8028

If you have questions you may call Plaintiff' attorneys:
Toll free telephone in California: 1-866-RESPETO (1-866-737-7386)

Your Legal Representation

JUAN CERVANTES and the other Plaintiffs are represented by Talamantes, Villegas, Carrera, LLP, a private law firm in San Francisco. Talamantes Villegas, Carrera will seek an award of attorneys' fees and all counsel will seek an award of costs from the court.

Effect of Joining or Not Joining This Lawsuit

If you are eligible to join this lawsuit and do so, you will be included in the decision made by the judge, whether favorable or unfavorable. You may also share in any money received in the lawsuit, either through a decision by the Court or a settlement. There is no guarantee that any money will be recovered in this lawsuit. While the suit is proceeding, you may be required to provide information to Plaintiffs' attorneys or to the Defendants concerning your work.

By joining the lawsuit, you designate JUAN CERVANTES and the other Plaintiffs to make decisions on your behalf concerning this case. The decisions and agreements made in this lawsuit will affect your claims. Your continued right to participate in this case may depend upon a later decision that you and the other Plaintiffs are similarly situated, in accordance with federal law. If you do not join this lawsuit, you will not be included in any decision made by the judge, whether favorable or unfavorable, and you will not receive any of the money that may be received from the lawsuit.

Time Limit in Which to File a Claim

The federal minimum wage law has a maximum three-year period after the weeks in which a pay problem occurred to bring a claim if a violation is willful and two years if the violation is not willful. Plaintiffs seek recovery of unpaid wages for four years after the date of filing this lawsuit

pursuant to California Business and Professions Code § 17200, et. seq. The time limit for filing a lawsuit may expire if you do not join this lawsuit or file your own lawsuit within two or three years from the date when you received your paychecks. If you do not join this lawsuit, you may file your own lawsuit.

No retaliation or Discrimination is Permitted

It is a violation of United States law for ACF Custom Concrete, Inc. and Art Fisher to fire, refuse to hire, or in any manner discriminate against you for taking part in this case. They may not deny you work due to your participation in this lawsuit, nor does your participation affect whether you can receive a visa to return to work for these or other employers. If you believe that you have been discouraged, threatened, or discriminated or retaliated against for discussing or choosing to join in this lawsuit, you can call 1-866-RESPETO (1-866-737-7386) (if you are in the California) or at **01-415-989-8000** (if you are in Mexico).

Additional Information

You may call Plaintiffs' lawyers at **866-737-7386** (if calling in the U.S.) or **01-415-989-8000** (if you are in Mexico).

THE PARTIES STIPULATE AND SEEK AN ORDER THAT:

1. The Court preliminarily certifies a FLSA collective action for:

All current and former employees of Defendant A.C.F. CUSTOM CONCRETE CONSTRUCTION, INC. who have performed construction involving the trade of laying concrete for work on public works projects or on private concrete pouring projects for Defendant A.C.F. CUSTOM CONCRETE CONSTRUCTION, INC. between OCTOBER 20, 2004 and APRIL 29, 2009.

2. The Court approves an opt-in period of two months which shall commence within 10 days after entry of the order;

3. The Court approves the mailing and posting of the proposed notice, *supra*, for distribution by plaintiffs counsel by first class mail to potential class members which shall include notice of the Opt-in period. Versions of the Notice and Opt-in form that are in both English and Spanish shall be distributed to the workers..

4. The Court orders that Defendants post the notice, in English and Spanish, at their place of business during the 60 day notice period.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD:

Dated: April 28, 2009

For Plaintiff and the Putative Class:

TALAMANTES VILLEGAS CARRERA, LLP

By: /s/

Virginia Villegas

Mark Talamantes

Dated: April 28, 2009

For ACF Concrete:

LAW OFFICES of ADRON BEENE

By: /s/

Adron Beene

IT IS SO ORDERED.

Dated: 4/30/09



HON. RICHARD SEEBORG
MAGISTRATE, NORTHERN DISTRICT OF
CALIFORNIA, SAN JOSE DIVISION